

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12890 of 2004

Between:

Dr. A. (M) Madhukar Rao, S/oGovind Rao, Aged 65 years,Occ:Agriculture,
Owner of the premises No.3-10-904 & 905 (old) 3-10-4(new) And 3-9-832/2,
Kotagally Road Kasbagally, Nizamabad Proper and District.

..... PETITIONER

AND

- 1 The Commissioner, Nizamabad Municipality, Nizamabad.
- 2 The District Collector, Nizamabad District, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of mandamus any other appropriate writ order or direction declaring the action of the respondents in earmarking the portion of petitioner's house bearing Municipal H.Nos.3-10-904 & 905 (old) 3-10-4(new) and 3-9-832/2, Kotagally Road Kasbagally, Nizamabad proper for the purpose of demolition as arbitrary, illegal, null and void and exceeding the powers vested in them and also violating the principles of natural justice and also violating the Articles 14, 19, 21 and 300-A of the Constitution of India, consequently direct the respondents not to demolish any portion of the premises H.Nos.3-10-904 & 905 (old) 3-10-4 (new) and 3-9-832/2, Kotagally Road Kasbagally, Nizamabad proper of the petitioner unless Land Acquisition proceedings are initiated and compensation is paid.

Counsel for the Petitioner: MR.K.VENUMADHAV, Advocate.

Counsel for Respondent No.1: MR.R.Thimma Reddy, S.C. for Municipalities.

Counsel for respondent No.2: Govt. Pleader for Revenue.

The Court made the following:

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ORAL ORDER

Learned counsel for the petitioner as well as the learned Standing Counsel for the 1st respondent-Municipality represent that the writ petition may be disposed of in the light of the directions issued by a Division Bench of this Court in W.P.No.21198 of 1997 dated 03-02-1998.

Rule Nisi.

The petitioner who is the owner of the house property bearing Municipal H.No.3-10-904&905 (old) 3-10-4 (new) and 3-9-832/2 situated at Kasbagally, Nizambad filed the present writ petition apprehending highhanded and illegal action of the respondent-Municipality in trying to dispossess him from the property under the garb of widening of the road, which is in utter violation of Article 300-A of the Constitution of India.

Several writ petitions complaining against the arbitrary actions of the various Corporations, Municipalities and Panchayats in proceeding with the widening of the roads without due process of law have come up for consideration before this Court and ultimately a Division Bench of this Court disposed of the W.P.No.21198 of 1997 dated 03-02-1998 with the following directions:

1. Whether a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.
2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days prior notice notifying as to the nature of the property to which it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorized occupation and also determine

whether the property in question belongs to Government, any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.
4. If the demolition is in respect of local bodies/Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.
5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.
6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

In view of the same, whenever the 1st respondent-Municipality is proceeding with the widening of the roads, they are bound to proceed with the same by following due process of law as contemplated under A.P. Municipalities Act as well as Land Acquisition Act, 1894 or by way of private negotiations.

Following the guidelines issued by a Division of this Court, this writ petition is disposed of with a direction to the 1st respondent-Municipality not to dispossess the petitioner from the house property bearing Municipal H.No.3-10-904&905 (old) 3-10-4 (new) and 3-9-832/2 situated at Kasbagally, Nizambad without either following due process of law or private negotiations. However, this order will not preclude the

respondent-Municipality to negotiate with the petitioner and if the petitioner agrees for such road widening and gives consent to give the property in question, it is open for the respondent-Municipality to acquire the same in accordance with law.

_____ A.GOPAL REDDY,J.

23-07-2004

Note: Operative portion by wire

at party's cost.

(bo)

Murthy

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Nizamabad Municipality, Nizamabad.
 - 2 The District Collector, Nizamabad District, Nizamabad.
 - 3.Two CCs to the Govt. Pleader for Revenue, High Court of A.P.
- Hyderabad (OUT)
4. Two CD copies.